



**BOARD OF ADJUSTMENT
TUESDAY, SEPTEMBER 30, 2014
5:00 P.M.**

AGENDA STAFF REPORT

ITEM 1: A request to **appeal** the administrative denial by the City of St. George of a request for reasonable accommodation for a residential treatment facility to exceed eight (8) residents with sixteen (16) residents at 444 S 400 E. Mr. Gary Kuhlman, representative, on behalf of Mr. Mike Jorgensen, Steps Recovery, representing SLSG (Sober Living St George LLC). The property is zoned R-1-8. Case # 2014-BOA-001

Request: A determination of whether the City's denial of the request for 16 unrelated residents was correct under the law.

Appeal Ordinance: An appeal may be made to the Board of Adjustment (BOA) of an administrative official's interpretation or decision in carrying out a provision of the zoning ordinance per Section 10-3-5.

Zoning: R-1-8 (Single Family Residential 8,000 sq. ft. minimum lot size)

Representative: Mr. Gary Kuhlmann
Gary Kuhlmann & Associates, P.C.
113 East 200 North, Suite 1
St George, Utah 84770

Property: 444 S 400 E

Ordinance: For 'Reasonable Accommodation' see Section 10-14-21.E (attached)

Comments: Appeal Letter – Attachment "1" (26 pages)
The applicant's representative (Mr. Gary Kuhlman) submitted a letter (with attachments) dated August 14, 2014, addressed to the Board of Adjustment regarding the "*Appeal of Denial of Reasonable Accommodation*" 444 South 400 East, St George, Utah 84770" (see attached).

City Denial Letter – Attachment “2”

In a previous letter dated July 16, 2014 (see attached), the City, acting through its appointed designee, Deputy City Attorney Paula Houston, denied SLSG’s request due to the fact that the City had already accommodated SLSG based upon Section 10-14-21 and the applicant had failed to meet its burden of demonstrating that an accommodation was necessary or reasonable under the appropriate legal standards.

Basis of Appeal

The applicant appeals the denial on the following grounds:

1. A hearing was denied before the St George City Council or its designee to address the request.
2. The denial was made by other than the City Council or its designee.
3. The interpretation of SGCC 10-14-21 is erroneous. If no further accommodation is required simply because the City has already made an accommodation by allowing eight (8) persons to live in a residential treatment facility, the provisions of SGCC 10-14-21.E would be meaningless and of no effect, since no further accommodation would be available.
4. The denial violates the Americans with Disabilities Act, the Federal Fair Housing Act, and the Utah Fair Housing Act.
5. SLSG was denied a hearing before the City Council or its designee to address the request.

Rebuttal – Attachment “3”

See attached brief and accompanying exhibits from attorney Dan McDonald representing the City of St George.

Rebuttal – Attachment “4”

See attached brief from attorney Gary Kuhlmann representing the SLSG.

Ordinance – Attachment “5”

For Section 10-14-21 “Residential Facilities for Persons with Disability” see attachment.

Number of residents

The property at 444 S 400 E was originally approved for "Sober Living" St George (SLSG) by a business license for only a maximum of eight (8) persons on August 30, 2011. The site was never permitted for sixteen (16) residents by the City and such a number would be a violation of the approved business license as well as the City's zoning ordinance, which limits the number of unrelated **persons that may live in a single dwelling to four persons.** See Utah Code Ann. § 10-9a-505.5 and St. George City Code § 10-2-1 & § 10-7B-2.

Basis

There is not a clear basis for accommodation in the statement provided by the applicant's representative; the applicant's statement claims that 11 persons were residents at the facility under the operation of "Sober Living" but 11 residents were never approved and the fact that residents may have been staying there illegally is not a basis for granting an accommodation. A clear reason why the City should grant an increase from 8 allowed residents to the requested 16 residents has not been articulated.

Traffic

The applicant believes traffic will be negligible but provided no evidence to support this claim.

Parking

The applicant has not addressed parking for accommodating 16 residents plus staff, vendors and visitors.

Neighborhood Character

The City has already accommodated for 8 persons within a single family neighborhood. Any additional accommodation would create a multifamily or a commercialized business character in a residential neighborhood, which is inconsistent with the current existing neighborhood, the zoning scheme and the General Plan.

Occupancy

The Building and Fire Departments would need to evaluate the structural and safety requirements for an occupancy of 16 persons plus staff in a single family residential house.

Single Family Residence

The property is zoned for single family only. Multiple Units are not permitted. In addition to only allowing 4 unrelated residents as a single

2014-BOA-001

Appeal of accommodation denial

Page 4 of 4

family, the detached garage with an area above it may not be used for additional occupancy.

RECEIVED

AUG 14 2014

ST. GEORGE CITY

ATTORNEY'S OFFICE

SESQUICENTENNIAL



BOARD OF ADJUSTMENT

APPLICATION & CHECKLIST

(Meets on the 3rd Tuesday of the Month)

**APPLICATION TO THE BOARD OF ADJUSTMENT TO REQUEST A
VARIANCE HEARING IN THE CITY OF ST. GEORGE, UTAH**

I. APPLICANT INFORMATION

APPLICANT: Sober Living St. George, LLC

MAILING ADDRESS: c/o Gary. G. Kuhlmann, 107 South 1470 East, Suite 105,
St. George, Utah 84790

PHONE: (435) 656-6156 CELL: _____ FAX: (435) 634-1398

E-MAIL ADDRESS: kuhl1law@infowest.com

LOCATION OF SUBJECT PROPERTY: 444 South 400 East, St. George, Utah 84770

I / We do hereby apply to the Board of Adjustment on the following matter(s):

- Appeal of an administrative order, requirement, decision or determination in the enforcement of the ordinance;
- Special Exception to the terms of the Ordinance;
- Variance from the terms of the Ordinance. *(A hardship determination for a variance cannot be one that is of a self-imposed or economic nature)*

DEADLINE FOR APPLICATION SUBMISSION IS 4 WEEKS PRIOR TO A SCHEDULED HEARING DATE.

II. PROPERTY INFORMATION

ZONE: R-1-8 TAX I.D. NO. (PARCEL SERIAL NUMBER): SG-937-A-4

SUBDIVISION: _____

OFFICE STAFF USE ONLY

CASE NO. 20__-VAR-____ FILING DATE: _____ RECEIVED BY: _____ RECEIPT: _____

FEE: \$100.00 – PAYABLE BY CASH, CHECK OR MONEY ORDER

RECEIVED

AUG 14 2014

ST. GEORGE CITY
ATTORNEY'S OFFICE

SESQUICENTENNIAL



BOARD OF ADJUSTMENT

APPLICATION & CHECKLIST

(Meets on the 3rd Tuesday of the Month)

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SUBDIVISION: _____

OFFICE STAFF USE ONLY

CASE NO. 20__-VAR-____ FILING DATE: _____ RECEIVED BY: _____ RECEIPT: _____

FEE: \$100.00 – PAYABLE BY CASH, CHECK OR MONEY ORDER

III. SUBMISSION REQUIREMENTS (* indicates mandatory item)

- 1.* This application form is completed and the \$100.00 fee is attached.
- 2.* Mailing Labels - Property Owner's (*The mailing labels can be obtained from the Washington Recorder's Office at 87 North 200 East*)
- 3.* Radius Map – Property Owner's- identifying all properties within the required 300 ft. radius. (*The map can be obtained from the Washington County Recorder's Office at 87North 200 East - See attached example*).
- 4.* As required by **UTAH STATE MUNICIPAL CODE Section 10-9a-702(2)(a)** or as amended, you must provide a typewritten narrative listing **EACH** of the following five statements with a response (findings) to each one:
 - a. *Literal enforcement of the zoning ordinance would cause an unreasonable hardship** for the applicant that is not necessary to carry out the general purpose of the zoning ordinance;*
 - b. *There are special circumstances attached to the property that do not generally apply to other properties in the same district (zone);*
 - c. *Granting the variance is essential to the enjoyment of a substantial property right possessed by other properties in the same district (zone);*
 - d. *The variance will not substantially affect the general plan and will not be contrary to the public interest, and;*
 - e. *The spirit of the zoning ordinance is observed and substantial justice done.*

(**Note: The determination of an 'Unreasonable Hardship' is outlined in Ord. 10-3-6.C.3)

- 5.* A copy of the Subdivision Plat or County Plat Map.
- 6.* A Legal Description of the property on an 8.5" x 11" sheet size.
- 7. Floor Plan (if applicable) – minimum sheet size 24" x 36"
- 8. Site Plan, drawn to scale, showing roads, easements and utilities – minimum sheet size 24" x 36"

IV. APPLICANT AGREEMENT

I / We realize that I / We or our agent **MUST be in attendance** at the Board's next meeting (3rd Tuesday of the month commencing at 4:00 pm), and that this application will be advertised in the local media, a sign posted on the property, and notices sent to the adjacent property owners within three hundred (300') feet of the subject property.

A copy of City Code, Title 10, Chapter 3 "Board of Adjustment" is attached to the application to assist the applicant in preparing this application.

Signature

ATTORNEY FOR APPLICANT

Date

8-14-14



HAND-DELIVERED

August 14, 2014

Board of Adjustment
City of St. George
175 East 200 North
St. George, Utah 84770

Re: Appeal of Denial of Reasonable Accommodation
444 South 400 East, St. George, Utah 84770

Ladies and Gentlemen:

This firm represents Sober Living St. George, LLC ("SLSG"). On June 16, 2014, SLSG submitted to the City a Reasonable Application Request ("Request"). A true and correct copy of the Request is attached hereto as Exhibit A. Under the Request, SLSG asked for approval for 16 persons to be allowed to reside at the property located at 444 South 400 East, St. George, Utah. This location would be used in conjunction with the Steps at St. George residential treatment facility located in Bloomington.

By letter dated, July 16, 2014, the City, acting through Deputy City Attorney, Paula Houston, denied SLSG's Request. The basis for the denial was that the City had already accommodated SLSG based upon St. George City Code ("SGCC") § 10-14-21, which designates a residential facility for the disabled as a permitted use in any zone in which a dwelling is allowed, as long as there are no more than 8 disabled persons housed in the facility. A true and correct copy of SGCC § 10-14-21 is attached hereto as Exhibit B.

SLSG appeals the denial of the Request on the following grounds:

1. SLSG was denied a hearing before the St. George City Council or its designee to address the Request.
2. The denial was made by other than the City Council or its designee.

Office 435-656-6156 • Fax 435-634-1398

107 South 1470 East • Suite 105 • St. George, UT 84790

P.O. Box 910387 • St. George, UT 84791

3. The interpretation of SGCC § 10-14-21 is erroneous. If, as claimed by the City, that no further accommodation is required simply because the City has already made an accommodation by allowing 8 persons to live in a residential treatment facility, the provisions of SGCC § 10-14-21(E) would be meaningless and of no effect, since no further accommodations would be available.
4. The denial violates the Americans with Disabilities Act, the Federal Fair Housing Act and the Utah Fair Housing Act.
- A. **SLSG was denied a hearing before the St. George City Council or its designee to address the Request and the denial was made by other than the City Council or its designee.**

While SLSG concedes that there is nothing in the provisions of SGCC § 10-14-21 that requires a hearing before the City Council or its designee, application is to be made "to the city council, or the council's designee." *Id.* Thus, by implication the matter is to be heard by the City Council or its designee. SLSG is informed and believes that at the time of the denial, Deputy City Attorney Paula Houston was not the designee of the City Council to hear and decide requests for reasonable accommodation.

The City's created and mandated Reasonable Accommodation Request form provided to SLSG to request a reasonable accommodation, provides "REQUESTS SHALL BE HEARD BY THE CITY COUNCIL AT A REGULARLY SCHEDULED MEETING WITHIN *THIRTY (30) DAYS* AFTER A COMPLETE APPLICATION HAS BEEN SUBMITTED AND ACCEPTED." (Capitalization and emphasis in original). At no time was SLSG advised that the Request was not complete or that it had not been accepted. Based upon the City's own statements, SLSG was therefore entitled to a hearing before the City Council within 30 days of the submission of the Request. This did not happen. The opportunity which SLSG was advised **would** happen, **did not** happen.

The interpretation of SGCC § 10-14-21 is erroneous. If, as claimed by the City, that no further accommodation is required simply because the City has already made an accommodation by allowing 8 persons to live in a residential treatment facility, the provisions of SGCC § 10-14-21(E) would be meaningless and of no effect since no further accommodations would be available.

B. The denial violates the Americans with Disabilities Act, the Federal Fair Housing Act and the Utah Fair Housing Act.

The Americans with Disabilities Act (“ADA”) provides that “No individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation by any person who owns, leases (or leases to), or operates a place of public accommodation.” 42 U.S.C. § 12182(a). The ADA specifically prohibits “a failure to make reasonable modifications in policies, practices, or procedures, when such modifications are necessary to afford such goods, services, facilities, privileges, advantages, or accommodations to individuals with disabilities, unless the entity can demonstrate that making such modifications would fundamentally alter the nature of such goods, services, facilities, privileges, advantages, or accommodations.” *Id.* at § 12182(2)(A)(ii).

Under the Federal Fair Housing Act (“FFHA”) it is unlawful “To discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection with such dwelling, because of a handicap. . . .” 42 U.S.C. § 3604(f)(2). Additionally, for purposes of subsection (f) “discrimination includes . . . a refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling.” *Id.* at 3694(f)(3)(B). A person is handicapped if he or she has a mental or physical impairment. 42 U.S.C. § 3602(h). It is well established that persons who are recovering from drug or alcohol addiction are handicapped under the FHA. *See Oxford House v. Town of Babylon*, 819 F. Supp. 1179, 1182 (E.D.N.Y. 1993); *Corporation of the Episcopal Church in Utah v. West Valley City, Utah*, 119 F.Supp.2d 1215, 1219 (D. Utah 2000). Thus, a person can establish a violation under the FFHA by, among other things, showing that the defendant failed to make reasonable accommodations in rules, policies, or practices so as to afford people with disabilities an equal opportunity to live in a dwelling.

The Utah Fair Housing Act (“UFHA”) basically mirrors the FFHA and provides “A discriminatory housing practice includes: . . . a refusal to make reasonable accommodations in rules, policies, practices, or services when the accommodations may be necessary to afford the person equal opportunity to use and enjoy a dwelling.” Utah Code Annotated § 57-21-5(4)(b).

Court cases have analyzed the provisions of the Federal Acts in determining whether disabled individuals have been discriminated against. In the case of *Smith & Lee Assocs., Inc. v. City of Taylor, Michigan*, 102 F.3d 781 (6th Cir. 1996), the Court analyzed whether the city violated the FHAA by failing to make reasonable accommodations for an elderly facility. The

ordinance at issue restricted the number of residents in an elderly care facility to 6 residents. The plaintiff sought an accommodation for 12 residents. Expert testimony was offered to the effect that such facilities are not economically feasible with fewer than nine residents. The Court, to determine whether the city was required to grant a reasonable accommodation looked at three elements: equal opportunity, necessity, and reasonableness. *Id.* at 794; *see also West Valley City*, 119 F.Supp.2d at 1221.

In addressing the issue of equal opportunity, the court found “persuasive the analysis of courts that define equal opportunity under the FHAA as giving handicapped individuals the right to choose to live in single-family neighborhoods, for that right serves to end the exclusion of handicapped individuals from the American mainstream.” *Id.* at 794-795. The Court noted that the FHAA “prohibits local governments from applying land use regulations in a manner that will . . . give disabled people less opportunity to live in certain neighborhoods than people without disabilities.” *Id.* at 795. In addressing the issue of necessity, the Court referred to the case of *Brandt v. Village of Chebanse, Ill.*, 82 F.3d 172 (7th Cir. 1996), which observed that for handicapped persons, “joint living arrangements are essential, [and] some minimum size may be essential to the success of the venture.” *Id.* at 795 (quoting *Brandt*, 82 F.3d at 174). Finally, in addressing whether the requested accommodation was reasonable, the Court referred to the case *Southeastern Community College v. Davis*, 442 U.S. 397 (1979), wherein the Supreme Court held that an accommodation is reasonable unless it requires “a fundamental alteration in the nature of a program” or imposed “undue financial and administrative burdens.” *Davis*, 442 U.S. at 410.

In *Corporation of the Episcopal Church in Utah v. West Valley City, Utah*, 119 F.Supp.2d 1215, 1219 (D. Utah 2000), the plaintiff wanted to construct a facility for recovering drug addicts and alcoholics in a residentially-zoned area. The city, however, refused to issue a conditional use permit or building permit. The District Court first noted that courts “have unanimously applied the reasonable accommodations requirement to zoning ordinances and other land use regulations and practices.” *Id.* at 1220. The court defined “reasonable accommodation” as “changing some rule that is generally applicable so as to make its burden less onerous on the handicapped individual. *Bangerter v. Orem City*, 46 F.3d 1491, 1502 (10th Cir. 1995)” *Id.*

In evaluating whether the accommodation sought was reasonable, the court observed that “a court may consider as factors the extent to which the accommodation would undermine the legitimate purposes and effects of existing zoning regulations and the benefits that the accommodation would provide to the handicapped.” *Id.* at 1221. The court stated that courts “may look not only to [the accommodation’s] fundamental and administrative aspects, but also to its costs.” *Id.* *West Valley City* argued that the requested accommodation would “require a

Board of Adjustment
August 14, 2014
Page Five

drastic change in policy.” *Id.* However, the court noted that the City had presented no evidence as to any detrimental affects from granting the accommodation, other than the complaints of neighbors. *Id.*

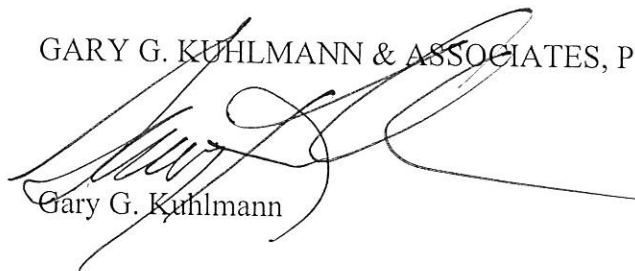
In this case, the disabled persons served by SLSG need an accommodation and the requested accommodation is reasonable. These disabled people have a right, guaranteed under Federal and State law, to live in the R-1-8 neighborhood at issue here. In order to take advantage of this right, these disabled individuals need an accommodation, as they cannot live independently, and locations such as that of SLSG really provide the only means by which they can continue to live in residential neighborhoods as recovering addicts. Finally, the request for 16 residents is reasonable. As stated in the Request, the State of Utah has licensed this facility for 16 persons, the St. George Fire Department has approved the residence for 16 persons, and, prior to the purchase of the facility by the current owner, at least 11 persons had been living in the residence and the neighbors did not even know.

Contrarily, the only basis enunciated by the City for denial of the Request is because the ordinances of the City already allow for 8 persons to reside in the facility and that is enough of an accommodation. The City failed to find any factors applicable to this specific facility or the neighborhood that supported a denial of the Request.

The residents of the SLSG facility live like most other families. They eat together, socialize with one another, and they rely on each other for support and succor. Allowing SLSG’s facility to have 16 residents is a reasonable accommodation without burden on the neighborhood or the City of St. George.

Sincerely,

GARY G. KUHLMANN & ASSOCIATES, PC



Gary G. Kuhlmann

xc: Client

EXHIBIT A

REASONABLE
ACCOMMODATION REQUEST
APPLICATION



APPLICATION TO THE ST. GEORGE CITY COUNCIL REQUESTING A
REASONABLE ACCOMMODATION PURSUANT TO ST. GEORGE CITY CODE 10-
14-21 RESIDENTIAL FACILITIES FOR PERSONS WITH A DISABILITY

I. APPLICANT INFORMATION:

APPLICANT: Michael Jorgensen

MAILING ADDRESS: 1085 S. Bluff St.

St. George, UT 84770

PHONE: 435-674-9999 CELL: 801-368-9766 FAX: 435-688-1085

E-MAIL ADDRESS: mikej@stepsrc.com

LOCATION OF PROPERTY: 444 S. 400 E., St. George, UT 84770

I hereby request the City Council make a reasonable accommodation in
accordance with Ord. 10-14-21(E) on the following matter(s) (state what
accommodation you are requesting and the basis for the request):

See attached.

Attach additional sheets and other relevant information as necessary.

REQUESTS SHALL BE HEARD BY THE CITY COUNCIL AT A REGULARY SCHEDULED MEETING
WITHIN THIRTY DAYS (30) DAYS AFTER A COMPLETE APPLICATION HAS BEEN SUBMITTED
AND ACCEPTED.

OFFICE STAFF USE ONLY:

Form Revised 04/14/14

CASE NO. _____ DATE SUBMITTED: _____

Office Date Stamp

II. PROPERTY INFORMATION

ZONE: R-1-8 TAX I.D. NO. (PARCEL SERIAL NUMBER): SG-937-A-4

SUBDIVISION: Not applicable.

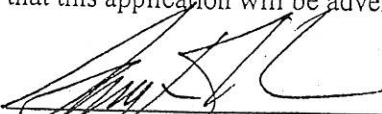
III. SUBMISSION REQUIREMENTS

1. This application form is completed and all required documents are attached.
2. Floor Plan – minimum sheet size 24" x 36"
3. Plans on how the property will comply with all building code requirements.
4. Site Plan, drawn to scale, showing roads, structures on lot and parking – minimum sheet size 24" x 36"

IV. APPLICANT AGREEMENT

I / We realize that I / We or our agent MUST be in attendance at the City Council Hearing and that this application will be advertised in the local media and on the Public Notice website.

Signature(s)


GARY KUTTMARK
ATTORNEY FOR APPLICANT

Date

6-16-14

STATEMENT OF ACCOMMODATION AND BASIS

Sober Living St. George, LLC ("SLSG") is seeking reasonable accommodation to allow up to 16 residents in a residential facility for person with a disability.

SLSG was recently purchased by MJ Operations, Inc. Before such purchase, the prior owner of SLSG was approved by the State of Utah to house 16 persons. At the time of the purchase, the facility was actually housing 11 persons. After the purchase, it was learned that while the State had licensed the facility for 16 persons (*see* Exhibit A hereto), and the St. George Fire Department had approved occupancy for 16 persons (*see* Exhibit B hereto), the City business license currently allows for only 8 persons to be housed (*see* Exhibit C hereto). Site maps and plans are submitted herewith. Additionally, other documents regarding the facility and building code compliance are currently on file with the City Building Department.

It is acknowledged that there are some "sober houses" currently operating in St. George; many of them without seeking any license or approval from the City. SLSG desires to adhere to all City requirements and obtain all necessary licenses and approvals, and therefore is filing this application for reasonable accommodation.

As you are likely aware, MJ Operations, Inc. also owns Steps at St. George, which operates an 8 bed residential treatment facility in Bloomington. It is anticipated that the SLSG facility will be used in conjunction with the Bloomington facility. It has been shown that recovery from addiction is more successful when carried out in a residential atmosphere rather than an institutional one. SLSG would house men ages 18 – 80. SLSG would be a tobacco free environment, including chewing tobacco. The residents would be supervised by a resident house manager to assure compliance with the rules of the house.

Residents of SLSG must be, and remain, sober. Persons actively engaged in the use of drugs or alcohol will be denied residence or evicted. SLSG would not accept residents who have a known history of violent crimes, a known history of sex crimes, or any outstanding warrant.

Security at SLSG would be monitored by the house manager. Additionally, security cameras and security monitoring systems, with motion detection, motion activated lighting and recording capabilities, would be installed. Any resident violating the rules of SLSG would be evicted from the home. Any interaction by residents with neighbors or others from the property would be in a respectful manner.

We believe any traffic increase to the surrounding neighborhood from SLSG would be negligible. As stated above the property has been housing up to 16 residents over at least the past three years without any discernable impact on the neighborhood. In fact, the neighbor right next to the facility did not even know it was being operated as a sober living facility. *See* Exhibit D attached hereto. All resident parking would be on the property as indicated on the site plan. No one will be able to recognize the use of the property as a residential facility for persons with a disability. The residents of SLSG will live like most of the other families in the neighborhood. They will eat together, and will rely on each other for social activities and support.

In reviewing this application for reasonable accommodation, we request that the City "consider as factors the extent to which the accommodation would undermine the legitimate purposes and effects of existing zoning regulations and the benefits that the accommodation would provide to the handicapped." *The Corporation of the Episcopal Church in Utah v. West Valley City* 119 F.Supp.2d 1215, 1221 (D. Utah 2000). As noted in the *West Valley* case, "Those recovering from addiction have been shown to benefit from living with others in similar situations, and their presence in residential neighborhoods allows the recovering individuals to re-integrate into the community at large. *Id.* at 1222 (citing *Oxford House, Inc. v. Town of Babylon*, 819 F. Supp. 1179, 1181 (E.D.N.Y. 1993)). SLSG's intent is to establish and run this facility in a clean, drug-free, single family neighborhood that will provide the occupants a sense of pride and self-worth. It has been found that the location of these houses in such neighborhoods plays a crucial role in an individual's recovery by promoting self-esteem, helping to create an incentive not to relapse, and avoiding the temptations that the presence of drug trafficking can create. *See Oxford House, Inc. v. Cherry Hill*, 799 F. Supp. 450, 453 (D. N. J. 1992). The proposed accommodation will have no adverse effect on the residential character of the neighborhood. Further, the occupants of the SLSG facility will not caused any financial or administrative burdens on the City, and, in fact, can relieve financial and administrative burdens which the City will face if the occupants are left without the opportunity to reside at the SLSG facility.

EXHIBIT A

State of Utah
Department of Human Services

Office of Licensing



SOBER LIVING PROPERTIES
SOBER LIVING ST. GEORGE
444 SOUTH 400 EAST
SAINT GEORGE, UT 84770

is hereby licensed to provide

SUBSTANCE ABUSE / RESIDENTIAL SUPPORT
FOR 16 ADULT MALE CLIENTS

in accordance with the laws of the State of Utah and the rules and regulations prescribed by the State Office of Licensing.

This license is issued for the period

October 1, 2013 to September 30, 2014

This license is not transferable and is subject to revocation for cause

Number 3052


Director

EXHIBIT B



City of St. George Fire Department
51 South 1000 East • St. George, UT 84770
Office: (435) 627-4150 • Fax: (435) 634-5944



INSPECTION REPORT

Address: 444 S. 400 E

Date: 9-27-13

Name/Business: Schae Living St George

Phone: 435-275-2591

Occupancy:

District:

TYPE OF INSPECTION

- ☒ Annual ☐ Certificate of Occupancy ☐ Occupancy Change
☐ Complaint ☐ Day Care/Preschool ☐ Business License ☐ Other

FIRE SUPPRESSION AND ALARM SYSTEM

- ☐ Flush ☐ Pressure ☐ Final ☐ Alarm ☐ Hood ☐ Booth ☐ Other
Static 2 Inch drain test Residual

Approved ☐

☐ Corrections Required

Licensed for 16
11 occupants none

☐ RE-INSPECTION REQUIRED WITHIN _____ DAYS/HOURS

THIS IS AN OFFICIAL NOTICE. PLEASE GOVERN YOURSELF ACCORDINGLY. The items noted above are in violation of St. George's Fire Code and require corrective action on your part within the time specified. Failure to correct the code violation may lead to legal action. This inspection is intended for your safety and the safety of the citizens of the City of St. George. Your prompt compliance and cooperation are greatly appreciated. For more information concerning this inspection, call (435) 627-4150.

Inspector: Dan Lazier

Received By: Dan Lazier

Signature
[Signature]
Signature

Date:

Date: 9-27-13

EXHIBIT C

sent license 10/4/14
CITY OF ST GEORGE
RECEIVED
FEE: \$9.0000
LICENS
3:41 PM
PER: AUG TERM: 2011
REF: 101

* Narrative attached.
License Number: 27569

CITY OF ST. GEORGE

175 East 200 North • St. George, UT 84770 (435) 627-4746

APPLICATION FOR BUSINESS LICENSE

BY: [Signature] TENDERED: 3/11/14 30.00CR
APPLIED: 3/11/14 1 CHECK(S)

Per 10-14-20 shall not exceed 8 persons including manager.
Affidavit attached. I am a single family owner. No residence in other garage. A

Please check applicable box:
☒ New
☐ Renewal (Must still complete form)
☐ Address change (Requires zoning approval)

FOR CITY OFFICE USE ONLY			
APPROVALS: (Required for New Business or Change of Location)			
Zoning	Date	Business L.O.	Date
City Attorney	Date	Police Chief	Date
Fire Chief	Date	Building Dept.	Date
Receipt Number	Date	Date	Date

Name of Business: Sabar Living St George LLC
Address at Which Business Will be Conducted: 444 S. 400 E. St George UT 84770

3434 E BEND CR BLVD #218 SLC, UT 84121
Mailing Address (If Different): 6905 E. 1300 E. #234 Midvale UT 84047
Business Phone: 801-537-9782

Name of Applicant: MICHAEL BROWN SSN# 469-78-3531
Residence Address of Applicant: 6905 E. 1300 E. #234 Midvale UT 84047

Please attach a copy of the applicable documents filed with the State or Utah Division of Corporations and Commercial Code
Business is: ☐ Corporation ☐ Sole Proprietorship ☐ Partnership ☒ Limited Liability Company

List all owners other than applicant. If a corporation, partnership, or limited liability company, list other officers, general partners or members.
Michael Brown ALLEN ANDERSEN

Email Address: allen.andersen.ut@gmail.com

Date of Commencing Business in St. George: 8-8-11 Sales Tax Number: N/A Federal Tax ID: 45-2800599

Type of business to be conducted: Residential Support Home for Persons with Disabilities
If Required to be Licensed by State, Check Here: ☒ ALSO ATTACH A COPY OF STATE LICENSE. To be filed after issuance of St. George City License

Average Number of Employees: 8 Days & Hours of Operation: 10am-3pm
HOME OCCUPATION ORDINANCE: (Sign only if you are conducting a business out of your home. Request a copy of the Home Occupation Ordinance.)

I will comply with the provisions of the City's Ordinance for Home Occupation.
Signature: [Signature] Date: 8-8-11

BUSINESS LICENSE FEE PAYABLE:

General Business License Fee (\$50.00)	\$ 25.00
Number of Full-Time Employees: 21 at \$10.00 each	\$ 210.00
Number of Part-Time Employees: 0 at \$5.00 each (Who Will Work Less Than 450 Hours Per Year)	\$ 0.00
\$25.00 Late Charge on renewals after February 28	\$ 0.00
Amount of Bond (If Required)	\$ 0.00
Total Fees Due (\$350.00 Maximum Before Late Fee)	\$ 235.00

Application completed by (please print): Allen Andersen Title: Member

By submitting a signed application, the applicant certifies that the business does not and will not during the licensing period knowingly employ, or subcontract with any entity which employs workers in violation of 8 USC § 1324a. By signing, the applicant acknowledges that the applicant has read, understands, and agrees to comply with the requirements of federal and state law regarding eligibility of workers.

I understand that falsifying any information on this application constitutes sufficient cause for rejection or revocation of my license. I also understand that the City License Officer may require additional information as permitted by the ordinance, and also agree to supply the same as part of this application. I understand this License will expire December 31 and it is my responsibility to renew this License annually without further notification from the City of St. George.

* Authorized Applicant Signature: [Signature] Title: Member Date: 8-8-11

* Application must be signed by: a) a corporate officer if the business is a corporation (i.e. a president, corporate secretary-treasurer, or vice president of the corporation, or the manager of one or more manufacturing, production or operation facilities, with authority to sign documents); b) a general partner, member or proprietor if the business is a partnership, limited liability company or proprietorship respectively; or, c) a duly authorized representative (written authorization and written change of authorization must be attached) of the corporation, general partnership, limited liability company or proprietorship.

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EXHIBIT D

18 HOLES WITH CART \$40

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Sober house at 444 South 400 East, St. George, Utah, March 27, 2014 | Photo by Scott Heinecke, St. George News

Owner of Bloomington recovery center acquires sober house in St. George

Written by [Scott Heinecke](#) on March 31, 2014 in [News](#) - [12 Comments](#)

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ST. GEORGE — The owner of [Steps Recovery Center](#), the residential alcohol and drug recovery center that opened in the Bloomington neighborhood of St. George in January, is now opening a [residential support home](#) at 444 South 400 East in St. George in May. Sometimes referred to as a “sober house,” the residential support home offers a next phase for the Bloomington recovery center residents and others who are similarly situated.

“I purchased the existing company that owned and operated the home as a sober house,” Mike Jorgensen said. Jorgensen is the primary principal of the ownership entities for both facilities. He did so, he said, “with plans to renovate it and continue to use it for the same purpose.”

It is another phase in the recovery process allowing addicts to continue to get treatment and receive support from other residents who are also recovering from addiction

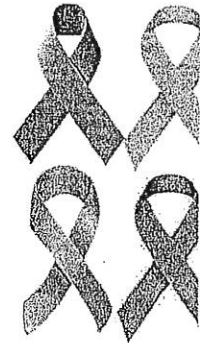
A sober house is much like an outpatient facility for those who have already gone through treatment at a residential facility like the one in Bloomington. It is another phase in the recovery process allowing addicts to continue to get treatment and receive support from other residents who are also recovering from addiction.

The home at South 400 East is capable of housing 16 beds and Jorgensen anticipates filling all of them, charging residents \$450-500 per month to stay at the home. The 4,700-square-foot house has nine bedrooms and eight bathrooms, Jorgensen said.

While [Jorgensen is no stranger to neighborhood controversy](#) surrounding these types of facilities, thus far his encounter in the neighborhood of South 400 East has been a minor one that was quickly resolved with the owner of the next-door property, Richard Wayman.

Wayman, returned home on Wednesday evening to find a three-foot block wall, or fence as he described it, that divided the two properties torn down. He then discovered

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that the new owner of the home was a company owned by Jorgensen and the fence had been torn down as part of the renovation process.

Jorgensen wanted to replace the short block wall that was in disrepair, he said, with a 6-foot block wall which would provide more privacy for both his residents and the neighbor. Although Wayman was at first unhappy the fence, which he said sits on his property, had been taken down by Jorgensen without any warning, he later said that he and Jorgensen quickly resolved concerns regarding the property line and height of the fence Thursday afternoon.

The home has been used as a sober house for the past few years, Jorgensen said, and there are still about 11 residents staying there. Those residents will be moving out to make way for new people that Jorgensen's business will bring in.

The home has been used as a sober house for the past few years

Wayman, who has lived in the next-door home since 2006, said he was surprised to learn that the home had been a sober house for the past few years. He was unaware that its residents were recovering addicts, he said, and the people living at the house were very nice and there were no problems other than smoke blowing over into his yard when some of them smoked out on the driveway.

His fears concerning the impact of having the sober house next door were alleviated after talking to Jorgensen, Wayman said. There will be no smoking allowed under the new ownership and now Wayman sees the new fence as an improvement, he said, giving them more privacy.






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Email: shelnecke@stgnews.com

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31

About the Author



Scott is the father of two children and is from Midvale, Utah. He played college basketball at UVU and has a bachelor's degree from Weber State University. He is a former police officer and private investigator. In his spare time he enjoys hiking and exploring the outdoors in the St. George area.

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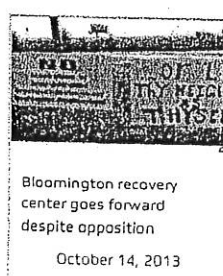
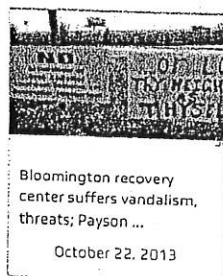
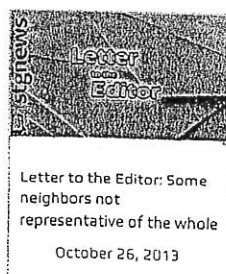


EXHIBIT B

10-14-21: RESIDENTIAL FACILITIES FOR PERSONS WITH DISABILITY:

A. Applicability: If any facility, residence or other circumstance meets the definition of a residential facility for persons with a disability as set forth herein, the requirements of this section shall govern the same notwithstanding any other provisions of this title:

B. Purpose: The purposes of this section are:

1. To comply with Utah Code Annotated section 10-9-605; and
2. To avoid discrimination in housing against persons with disabilities as provided in the Utah fair housing act and the fair housing amendments act as interpreted by courts having jurisdiction in Utah. (Ord. 8-3-1999, 8-19-1999)

C. Definitions: As used in this section, the following words and terms shall have the meanings ascribed to them in this subsection:

DISABILITY: A physical or mental impairment that substantially limits one or more of a person's major life activities, including a person having a record of such an impairment or being regarded as having such an impairment.

RESIDENTIAL FACILITY FOR THE DISABLED: 1. A single-family or multiple-family dwelling unit, consistent with existing zoning of the desired location, that is occupied on a twenty four (24) hour per day basis in a family type arrangement under the supervision of the resident family or manager, and that conforms to all applicable standards and requirements of and is licensed by the Utah department of human services division of services for people with disabilities, or department of health and is operated by or under contract with that department. The dwelling must be owned by one of the residents or by an immediate family member of one of the residents, or is a facility for which the title has been placed in trust for a resident.

2. "Residential facility for the disabled" shall not include facilities for the following: secure treatment, adult daycare, day treatment, comprehensive mental health treatment, comprehensive substance abuse treatment, or domestic violence treatment, as defined in Utah Code Annotated section 62A-2-101. (Ord. 8-3-1999, 8-19-1999; amd. 2003 Code)

D. Permitted Use; Requirements: A residential facility for persons with a disability shall be a permitted use in any zoning district where a dwelling is allowed. Each such facility shall conform to the following requirements:

1. Building And Safety Standards: The facility shall comply with all building, safety and health regulations applicable to similar structures. As part of this requirement, the following site development standards and parking standards shall be applicable:
 - a. Each facility shall be subject to minimum site development standards applicable to a dwelling in the zone in which the facility is located.
 - b. The minimum number of parking spaces required for a residential facility for persons with a disability shall be the same as those for a dwelling located in the same zoning district in which the facility is located, subject to the following:

(1) If support staff are employed on the premises of a facility, one additional parking space shall be required for each staff member.

(2) Parking shall not be located within the front yard setback.

2. Prohibited Uses: No facility shall be made available to an individual whose tenancy would:

a. Constitute a direct threat to the health or safety of other individuals; or

b. Result in substantial physical damage to the property of others.

3. Requirements Of Licensee: Prior to the occupancy of any facility, the person or entity licensed or certified by the department of human services or the department of health to establish and operate the facility shall:

a. Provide a copy of such license or certification to the city; and

b. Certify in a sworn affidavit to the city that no person will reside or remain in the facility whose tenancy would likely:

(1) Constitute a direct threat to the health or safety of other individuals; or

(2) Result in substantial physical damage to the property of others.

4. Nontransferable; Termination: The use permitted by this section is nontransferable and shall terminate if:

a. The facility is devoted to a use other than a residential facility for persons with disabilities; or

b. The license or certification issued by the department of human services or the department of health terminates or is revoked; or

c. The facility fails to comply with the conditions enumerated in this section.

5. Number Of Persons Limited: No residential facility for persons with a disability shall house more than eight (8) disabled persons, not related by blood or marriage.

6. Distance To Similar Facilities: No residential facility for persons with a disability, licensed for the housing of more than three (3) disabled persons, shall be established or maintained within one thousand feet (1,000'), measured in a straight line between the closest property lines of the lots or parcels, of the following similar facilities:

a. Another residential facility for persons with a disability licensed for the housing of more than three (3) disabled persons; or

b. A residential facility for elderly with more than three (3) elderly persons in residence.

7. Business License Required: For a residential dwelling for four (4) or more persons, as licensed by the department of human services, division of services for people with disabilities, the owner or provider shall be required to maintain a valid business license with the city.

8. Exemptions: A residential facility for the disabled shall not include facilities which house persons being treated for alcoholism or drug abuse, persons who are violent, who are not voluntarily residing therein, or who are residing therein as a part of or in lieu of confinement, rehabilitation or treatment in a correctional facility.

E. Reasonable Accommodation: None of the foregoing conditions shall be interpreted to limit any

reasonable accommodation necessary to allow the establishment or occupancy of a residential facility for persons with a disability.

1. Any person or entity who wishes to request a reasonable accommodation shall make application therefor to the city council, or the council's designee, and shall articulate in writing the basis for the requested accommodation.
2. Each application for a reasonable accommodation shall be decided within not more than thirty (30) days.
3. If a request for a reasonable accommodation is denied, such decision may be appealed to the board of adjustment in the manner provided for appeals of decisions applying this title. (Ord. 8-3-1999, 8-19-1999)

10-14-22: SHORT TERM LEASES OF RESIDENTIAL PROPERTIES:

A. Purpose And Intent: The purpose of this section is to promote the health, safety and general welfare of the residents of the city by establishing zoning regulations and zoning standards for short term leases of residential properties in the city so as to ensure:

1. Protection of the environment of the city, including use compatibility with existing residences;
2. Preserving the existing character and property values of the community by assuring appropriate uses;
3. Establishment of appropriate governance procedures to plan and oversee short term leases of residential properties to promote the interests and welfare of the community; and
4. Promote peace and safety within neighborhoods of the city.

B. Applicability:

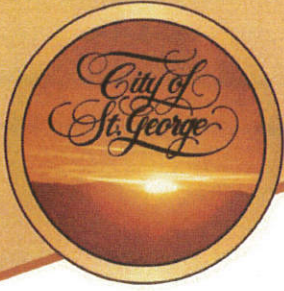
1. This section shall apply to short term residential rental properties, as defined in subsection C of this section.

C. Definitions: As used in this section, the following words and terms are defined as follows. Words in the singular number include the plural, and those in the plural include the singular:

SHORT TERM RESIDENTIAL RENTAL PROPERTY: Property which is used by any person or entity, for hostel, hotel, inn, lodging, motel, resort or other transient lodging uses where the term of occupancy, possession or tenancy of the property by the person is for twenty nine (29) consecutive calendar days or less, for direct or indirect remuneration. For this section, "remuneration" means compensation, money, rent or other consideration given in return for occupancy, possession or use of real property.

D. Requirements: Short term residential rental properties are prohibited in all residential zones, mobile home zones, agricultural zones, and residential planned development zones, unless the property satisfies the requirements enumerated in this subsection.

1. Planned Development (PD) Zone Requirements: Short term residential rental properties are permitted



CITY OF ST. GEORGE

175 East 200 North
St. George, Utah 84770

July 16, 2014

Gary Kuhlmann
Gary G. Kuhlmann & Associates, PC
107 S. 1470 E., STE 105
St. George, UT 84790

**Re: Request for Reasonable Accommodation at
444 S. 400 E., St. George, UT 84770**

Dear Gary:

On behalf of the City of St. George, I am writing in response to your June 17, 2014, "REQUEST FOR REASONABLE ACCOMMODATION" for Sober Living St. George, LLC (SLSG) at 444 S. 400 E. in St. George, UT. It is our understanding that SLSG was purchased by Mr. Jorgensen who has taken over an existing residential facility for persons with disabilities at the above-referenced location.

As you know, this property is in an R-1-8 zone which is a single family residential zone. The number of unrelated individuals allowed to occupy each residential unit in this zone is four. *See* Utah Code Ann. § 10-9a-505.5 and St. George City Code § 10-2-1. However, if the unrelated individuals have a disability or handicap St. George City Code § 10-14-21 accommodates them by allowing a residential facility for persons with a disability which is located in a residential zone to house up to eight (8) unrelated persons. When SLSG came in for a business license on August 8, 2011, it was licensed by the City of St. George as a residential treatment facility and they were accommodated pursuant to St. George City Code § 10-14-21 and allowed to have up to eight (8) unrelated individuals live at the residence. This number included the manager. At no time did the City authorize an increase in occupancy for this facility.

In your request, you are asking to be permitted to increase the number of residents to sixteen (16) pursuant to St. George City Code § 10-14-21(E). The City is aware that an accommodation for persons with disabilities is required if the accommodation is reasonable and necessary. "[T]he [Federal] statute requires only accommodations necessary to ameliorate the effect of the plaintiff's disability so that she may compete equally with the non-disabled in the housing market."; *Lapid-Laurel, L.L.C. v. Zoning Bd. of Adjustment of Twp. of Scotch Plains*, 284 F.3d 442, 460 (3d Cir. 2002)

CITY OF ST. GEORGE

175 East 200 North, St. George, Utah 84770
Phone: (435) 627-4000
www.sgcity.org

MAYOR

Jonathan T. Pike

CITY MANAGER

Gary S. Esplin

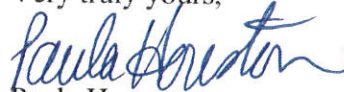
CITY COUNCIL

Gil Almquist
Jimmie Hughes, Michele Randall
Joe Bowcutt, Bette Arial

In order to grant an accommodation the City must have enough information to be able to determine whether the accommodation requested is reasonable, whether the accommodation requested is necessary, and whether the accommodation requested will result in a fundamental alteration in the nature of any City program or impose an undue burden upon the City. As stated above, the City has already accommodated SLSC by allowing eight (8) unrelated individuals instead of four (4). Based upon the foregoing and the information provided by the applicant, the City respectfully denies SLSC's request for an additional accommodation.

You may appeal the City's decision to the board of adjustment pursuant to St. George City Code § 10-14-21.E.3.

Very truly yours,

A handwritten signature in blue ink, appearing to read "Paula Houston", with a stylized flourish at the end.

Paula Houston

Deputy City Attorney

ATTACHMENT 3 IS NOT YET AVAILABLE.

ATTACHMENT 4 IS NOT YET AVAILABLE.

10-14-19: **TEMPORARY OUTDOOR EVENTS:** Temporary outdoor events (i.e., promotions, tent sales, exhibits, carnivals, concerts, etc.) may be permitted by the city council or a designated representative on property zoned commercial, including the planned development commercial zones, for a period not to exceed six (6) continuous days within a six (6) month period. This time limit applies to all local and out of town businesses and all commercial locations within the city. Special exceptions to the time limit may be granted by the city council on a case by case basis. Temporary outdoor events to be held on public property also require review and approval by the city council or a designated representative. Applicants shall submit adequate plans and information for the city to determine that the events will not interfere with the safety and general welfare of the community, nor violate any zoning, parking, licensing or other requirement or ordinance of the city. Required licenses, permits and special clearances shall be obtained prior to any event taking place. (1998 Document § 3-20)

10-14-20: **ZONE CHANGES; WATER AND ELECTRICAL SOURCE, ACCESS REQUIRED:** Zone changes shall not be approved unless the property involved shall have access to an approved source of water and electricity and access to a dedicated city street. (1998 Document § 11-3)

10-14-21: **RESIDENTIAL FACILITIES FOR PERSONS WITH DISABILITY:**

- A. Applicability: If any facility, residence or other circumstance meets the definition of a residential facility for persons with a disability as set forth herein, the requirements of this section shall govern the same notwithstanding any other provisions of this title:
- B. Purpose: The purposes of this section are:
 - 1. To comply with Utah Code Annotated section 10-9-605; and
 - 2. To avoid discrimination in housing against persons with disabilities as provided in the Utah fair housing act and the fair housing amendments act as interpreted by courts having jurisdiction in Utah. (Ord. 8-3-1999, 8-19-1999)
- C. Definitions: As used in this section, the following words and terms shall have the meanings ascribed to them in this subsection:

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A physical or mental impairment that substantially limits one or more of a person's major life activities, including a person having a record of such an impairment or being regarded as having such an impairment.

RESIDENTIAL FACILITY FOR THE DISABLED:

1. A single-family or multiple-family dwelling unit, consistent with existing zoning of the desired location, that is occupied on a twenty four (24) hour per day basis in a family type arrangement under the supervision of the resident family or manager, and that conforms to all applicable standards and requirements of and is licensed by the Utah department of human services division of services for people with disabilities, or department of health and is operated by or under contract with that department. The dwelling must be owned by one of the residents or by an immediate family member of one of the residents, or is a facility for which the title has been placed in trust for a resident.

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b. Certify in a sworn affidavit to the city that no person will reside or remain in the facility whose tenancy would likely:

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c. The facility fails to comply with the conditions enumerated in this section.

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3. If a request for a reasonable accommodation is denied, such decision may be appealed to the board of adjustment in the manner provided for appeals of decisions applying this title. (Ord. 8-3-1999, 8-19-1999)

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 2. Preserving the existing character and property values of the community by assuring appropriate uses;
 3. Establishment of appropriate governance procedures to plan and oversee short term leases of residential properties to promote the interests and welfare of the community; and
 4. Promote peace and safety within neighborhoods of the city.
- B. Applicability:
1. This section shall apply to short term residential rental properties, as defined in subsection C of this section.
- C. Definitions: As used in this section, the following words and terms are defined as follows. Words in the singular number include the plural, and those in the plural include the singular:

**SHORT TERM
RESIDENTIAL
RENTAL
PROPERTY:**

Property which is used by any person or entity, for hostel, hotel, inn, lodging, motel, resort or other transient lodging uses where the term of occupancy, possession or tenancy of the property by the person is for twenty nine (29) consecutive calendar days or less, for direct or indirect remuneration. For this section, "remuneration" means compensation, money, rent or other consideration given in return for occupancy, possession or use of real property.